REPRESENTATION IN THE NATIONAL CONGRESS FROM THE SECEDING STATES, 1861–65

I.

THE following paper deals with a small part of a very large subject. It is limited in two directions, in time and in scope. It ends just as Congress was about to constitute the Joint Committee on Reconstruction. It does not discuss the report of that committee; much less the laws that followed. It does not even discuss the earlier proposition in Congress, made in the form of bills for the better governing of the seceded states, or of resolutions setting forth the true relations between the national government and the seceding states. Interesting and valuable, doubtless, from some points of view, none of them were ever passed to be laws; none were ever applied practically.

Moreover of all the various relations existing between the several states and their citizens on the one hand and the national government on the other, only those with the national legislative are here discussed, and these not in full. The discussion is strictly limited to the cases in which the respective houses of Congress judged the qualifications of applicants for membership from the states in insurrection. The results are made public in the hope that they may prove of some little interest to students of United States history since 1860; and in the further hope that they may prove of some service as one introductory chapter to the study of reconstruction.

Ten times in the Senate and more than thirty times in the House of Representatives, during the Thirty-seventh and Thirty-eighth Congresses, was application made for admission by men claiming to represent some portion of the territory then in insurrection against the national government. Full lists of the cases with the disposition made of each are given in notes at the end of this article and of its continuation respectively. The body of the papers will be limited to an analysis of the typical cases in order to present the principles and interests involved.

The point of view is necessarily and exclusively that of the national government. In a considerable portion of the territory over which it held sway, its authority had of a sudden been resisted and defied; there was rebellion, the organization of a hostile government and attempted revolution.

Some of the states were in full possession of the hostile power before the national government could move. Its first step was to check the progress of secession. Maryland, Kentucky and Missouri were saved after a struggle. The next step was to recover lost ground. West Virginia had been promptly and completely recovered; and after a while Louisiana, Tennessee and Arkansas were regained beyond successful military dispute. The longer and more stubborn the resistance, the more difficult and risky the reconstruction. It is impossible to refer here to the work of the executive department of the government in reconstruction, or to describe the progress of the army and the work that was accomplished in its rear—establishing civil order and local government, opening the courts and starting business. Our attention must be confined to the action of the two houses of Congress on the question of filling the vacancies in their ranks by the admission of members from the states and districts which had seceded.

One general remark in passing: Some of the applicants for membership came representing districts which honestly and fully repudiated secession and secessionists. In other cases the desire of the applicant for office and the emolument thereof is more apparent than either the desire or the worthiness of the district to be represented. These are the extreme cases; others lie between.

The chairman of the House Committee of Elections in both Congresses was Mr. Henry Dawes (Rep.) of Massachussetts, later senator from that state. Of the nine members, six were Republicans and three Democrats, Mr. Voorhees, of Indiana, being the leader of the minority. In the Senate Mr. Lyman Trumbull (Rep.) of Illinois was chairman of the Committee on the Judiciary, to which all election cases were referred, with four Republican and two Democratic associates.[1]

When the Thirty-seventh Congress met in extra session, July 4, 1861, four congressmen appeared from Virginia, one from the district opposite Washington, including Alexandria, and three from the western portion of the state, out of which the state of West Virginia was afterwards formed. Mr. Dawes made a statement concerning the election west of the mountains. In brief the situation was this: In view of the near approach of the regular congressional election, the Richmond convention forbade the election of federal congressmen. There was no official call; but an election *de facto* was held on the regular day, May 23, and was part of a movement by which the people of the western counties were proceeding to repudiate the

[1] But when Jas. A. Bayard (Del., Dem.) resigned from the Senate, Jan. 29, 1864, his place on this committee was taken by Reverdy Johnson (Md., Rep.).

action of the Richmond convention and to form *ab initio* a state government composed of loyal men. The vote was taken in the midst of much partisan excitement. But "no serious breach of the peace occurred."[1] The vote was only moderately full, but the applicants received a majority of the votes cast. On this showing, Messrs. Brown, Carlile and Whaley were admitted to represent the tenth, eleventh and twelfth districts, respectively, and they immediately qualified and took their seats.

So also did Mr. Upton, from the seventh, the Alexandria district, whose case was not distinguished from the others at this time. Several days later, however, a member questioned his title to a seat and his case was referred to the Committee of Elections, which reported during the long session. The question was raised whether he was a citizen of Ohio or of Virginia at the time of his election. But the case was decided on another point. Only a small fraction of his district was loyal or at least able to show its loyalty. It was constantly threatened by the Confederate army and part of it had been occupied by them on the day of the alleged election. The election was called by the secession authorities for the choice of state senator and delegates to Richmond and was held on May 23. A document purporting to be a copy of the poll-book of one precinct (voting in Virginia at that time was *viva voce*) showed that ten votes had been recorded for the claimant for representative in the national Congress; but no election officers, secessionist or other, certified to its authenticity. The committee held that there was no proof that any votes at all had been legally cast for him and that he was not entitled to a seat. The report was opposed on the floor of the House on the ground that it was as proper to hold an election in this district on May 23d, as in the western districts, whose representatives had been admitted; that the authority of the Richmond convention should not be recognized either to prohibit or to supervise an election to Congress, and that it was simply a question whether loyal votes had been polled. But this point was covered in the report. The committee had inquired whether enough loyal votes had been polled to make the election a valid one, and had agreed that to seat him on the showing would be a bad precedent. A motion to amend the report by confirming Mr. Upton's title to his seat was voted down, fifty yeas to seventy-three nays (thirty-five Republicans and fifteen Democrats to forty-nine Republicans and twenty-four Democrats). Accordingly he was unseated, February 27, 1862.

Meanwhile the movement to re-establish a loyal state government had resulted in a popular convention at Wheeling; the convention

[1]Hagans's *W. Va. Reports*, I. 54.

had inaugurated a state government, including a legislature; the legislature had met, transacted ordinary business and adjourned. The convention, reassembling, then called an election for the choice of representatives in congress in those districts in which none had been chosen in May. Under this call an election was held in the first district, as a result of which Mr. Segar claimed a seat. The committee held that the convention had "no authority to act in the presence of the legislature." It was convened for the purpose of creating a new state. Its functions ceased the moment the new government took on form and life. The election was, therefore, illegal. They went on to say further that the law of Viriginia had not been complied with, and that, finally and decisively, a majority of the voters of the district had no opportunity to participate. Yet Mr. Blair, who was chosen to succeed Mr. Carlile in the eleventh district on the same day and under the same authority, had already been admitted without reference to a committee. Mr. Dawes had insisted, in the face of objections, that this case was clear on its face and in fact and ought not to be referred; and it was, indeed, pretty well known that there had been a full, fair and free expression of the wishes of the district. It therefore appears that the alleged illegality of the call was treated as cumulative with other irregularities in the case of Mr. Segar; and was overborne in the case of Mr. Blair by the fact that there had been a full, fair and free choice in his district, conducted at the polls in essential conformity to law. Still, if the first point made by the committee in the Segar case really means any thing, it is hard to harmonize with it the implied ruling of the House in the Blair case, supported, as the former is, by later rulings; and probably it is not best to try to do so. Mr. Blair's *prima facie* title to a seat was confirmed by the House without an investigation by the committee, an essential difference despite the attitude of the committee's chairman.

Mr. Segar was refused a seat, yeas 40, nays 85 (nineteen Republicans and twenty-one Democrats to sixty-seven Republicans and eighteen Democrats). A little later he returned, having been elected "according to law," by the votes of three counties out of seventeen in the district, including Norfolk city and constituting half the voting strength of the district. The reasoning of the committee was on this wise: The disloyalists must not be considered. Their relative number is important only in determining whether the loyalists acted freely and independently, without fear or intimidation; and this is determined accurately enough in most cases by considering whether the locality was well protected within the Union lines. Not all the loyalists would vote; only a small per cent in fact.

But those who were free to protest and did not are held to have acquiesced in the choice of the majority of those actually voting; and whoever had a majority of the votes legally cast is taken to be the representative acceptable to the majority of the loyal voters of the localities which participated in the election. But part of the district could not participate freely, being in the Confederate lines or dangerously near them. Could the representative chosen in a part be taken as the representative of those who had not even the opportunity to protest? A calculation would be necessary. An approximate estimate must be made of the proportion of loyalists in the total population of the localities participating. Such estimates were generally given in the evidence submitted in the case. Assuming the same proportion to hold for the whole district, a calculation must be made of the total number whose participation in the election, acquiescence or protest ought to be considered. Assuming further that the same proportion would have voted throughout the district had it been entirely free, an hypothetical total vote for the district could be calculated. Was the total number of votes actually cast for the claimant a majority of this hypothetic total? or if not quite, inasmuch as it would be an extreme supposition that the votes of the rest of the district would have been cast unanimously against him, was his proportion of the votes actually cast so large that it would be entirely safe to assume that, if the election had been actually free throughout the entire district, he would still have had a majority of the legal votes? If so he must be taken to be the representative of the district.

In a computation in which so many factors could be only approximately known, the margin of doubt would necessarily be large. Segar's second election was clearly within it. Of 1,018 votes cast Mr. Segar received 559. The localities participating contained half of the population of the district. In the last preceding gubernatorial election the district had cast 7,986 votes. It was not clear beyond a doubt that he should be considered the choice of a majority of the estimated vote; nor was it clear that he should not be. The committee would made no recommendation, but threw the responsibility of deciding upon the House and asked to be discharged.

The House decided the doubt in the claimant's favor by adopting a motion to seat him, seventy-one yeas to forty-seven nays (thirty-six Republicans and thirty-five Democrats to forty-two Republicans and five Democrats). Mr. Segar took his seat and participated in the proceedings looking to the admission of West Virginia to statehood, which he opposed.

It is noticeable that the Republicans voted against seating him by

a small majority and that the Democrats voted almost unanimously for it, though he was known to be an administration Republican. Indeed it is hard to find any indication of partisan lines, either between Republicans and Democrats or between administration and anti-administration men. Some Democrats voted for the admission of the representative in nearly every case, almost regardless of the special merits. Others voted as consistently against admission. Others still seem to have regarded only the merits of each particular case. This one inference seems warranted: the Democrats were, as a body, much more inclined than the Republicans to admit a claimant, whose credentials were formally correct, without critical investigation. Furthermore there are some things unexpressed which are nevertheless plainly to be read between the lines. Mr. Segar, for example, evidently enjoyed the respect and sympathy of the House, as was manifest even at the time of his first application. He then had friends on the floor of the House who pleaded earnestly for his admission, and the decisive majority against it at that time on a yea and nay vote is, therefore, an emphatic endorsement of the report of the committee, especially of the third point therein, rejecting his claims because a majority of the voters of the district had not had an opportunity to participate in the election.

Let us now turn to the case of A. J. Clements, from the fourth district of Tennessee, the seventh case in the chronological list which is appended to this article, but the first case on which the committee made a report, setting a precedent which was consistently followed. When the customary date for electing congressmen approached, the first Thursday of August, 1861, Tennessee had practically joined the Confederacy and had a secessionist state government. As it was desirable that the state should be represented in the Confederate Congress, the governor called a congressional election as usual and also submitted the permanent Constitution of the Confederate States for ratification. In the eastern section of the state there was a strong Union sentiment and a vigorous campaign was conducted against the Confederate Constitution as well as for it; for Federal as well as for Confederate congressmen. In some cases, if not in all, the Union and the Confederate votes were deposited in the same boxes and counted by the same officers.[1] In some voting-places there was a majority against the Confederate Constitution; and it appears that in some places even the local election machinery was in the hands of the Unionists. However, when the votes had been canvassed, the leading secessionist candidate in each district received his certificate of election to the Confederate Congress. The Union

[1] Personal recollections of Dr. E. E. Hoss, editor of the Nashville *Christian Advocate*.

candidates had to be satisfied with such evidence of their election as they could gather, largely unofficial. Three of them applied to the Congress at Washington and were admitted.

Mr. Thomas A. R. Nelson, from the first district, fell into the hands of the Confederates while on his way to Washington and was taken prisoner to Richmond. There influential friends secured his release on his promise to return home and take no further part in politics.[1]

Mr. Horace Maynard, from the second district, was present at the opening of Congress in December, 1861. His credentials were irregular, for neither governor nor canvassing officers would prepare them. But Mr. Dawes stated on his behalf that he had been elected on the usual day, under an ordinary proclamation; that the contest was regular, the vote large and the election according to old laws and long established usage; and that he had the certificates of the sheriffs in the several counties of his district that he was elected.

Mr. Clements was less fortunate. He had to flee from the state so soon that little legal evidence of his election could be secured. But among the exiles in Union camps and elsewhere in Kentucky he secured a number of affidavits of men who had voted for him, stating the fact and declaring that, in their opinion, from knowledge of the circumstances, about 2,000 votes were cast for him, the district usually casting some 6,000 votes, and the secessionist candidate at this time polling heavily.

The committee found that the vote in one county had been certified by the sheriff and was legal; in that county Mr. Clements was found to have nearly or quite all the Union votes. The election was free from intimidation; for there was no circumstance at the time to prevent such voters as chose so to do from depositing their votes for a representative in the Federal Congress; and he was unmistakably the choice of the Union men of the whole district. The committee recommended that he be seated, holding that the refusal of the governor to grant a certificate did not prejudice the right of the claimant, which in other respects they found to be satisfactory. The House so ordered.

Mr. Bridges, from the third district of Tennessee, did not reach Washington until more than a year later. In the third session, a week before the expiration of the Thirty-seventh Congress, he arrived and his case was brought up immediately by Mr. Maynard on a question of privilege. The House refused to refer his case, forty-five

[1] This differs slightly from the statement made in Congress (*Cong. Globe*, 37 Cong., 3 Sess., pp. 1295–6). It is based on the authority of Dr. Hoss, who at the time was neighbor's boy to Mr. Nelson. Mr. Nelson was a staunch Unionist, of sterling integrity and most highly esteemed throughout the community.

yeas to eighty-eight nays (twenty-one Republicans and twenty-four Democrats to seventy Republicans and eighteen Democrats). He was, therefore, admitted at once and given pay for the whole term. It was stated on the floor that his credentials were signed by the "secretary of the state," or by the "former secretary of the state." The writer has been unable to identify the functionary or discover the peculiar virtue in his certificate.

All the cases thus far discussed occurred within the first twelve months of the war. They may, therefore, be taken to illustrate the first impressions of what was the right and expedient attitude to take toward the people of the seceding states, and the results may now conveniently be analyzed.

The legal status of the seceding states scarcely entered into the consideration of the committee, *eo nomine*. Congress did not admit the right of a state to secede; secession then, if a fact at all, must be a fact not of right, but of might, *i. e.*, it would not be accomplished until the Federal Government should be forced to admit it and to cease opposing it by arms. Until that time the legal status of these states would remain unchanged, so far as the national government and its deliberations were concerned. The essential distinction to be drawn by the national government was that between obedient and disobedient, loyal and disloyal, citizens. The latter were numerous, organized, in possession of a considerable part of the territory within the boundaries of the United States, formidable in arms and entitled to be treated as belligerent enemies. The former must be protected in all their rights and privileges. Not only ought they to be allowed the representation to which they were entitled; but to secure it to them and increase the territory represented in Congress would add to the dignity of the government by making a show of success against the disloyalists. Also it would undoubtedly encourage the loyalists. Step by step, as conditions seemed to warrant, the executive re-established the postal system, collected the revenue and enforced the national laws; the judiciary opened the courts, and Congress permitted representation. So, gradually, complete normal relations might come to be established in a locality, in a whole state and in state after state.

Later, when the Federal arms were successful, and it was realized that the greater proportion of the population, both in numbers and in political and social influence, had been wilfully disobedient and was now professedly loyal only by force of circumstances which had brought to nought the efforts to maintain independence, it became a serious question whether, how far, and under what safeguards the people should be allowed to exercise their normal privileges. The

aspects which the situation then bore will serve by contrast to illustrate the aspect of affairs in the first months and years of the war.

In the districts under consideration, there was a nucleus of loyalists who had manifested their devotion to the national government by self-sacrificing words and acts of protest. Moreover the opinion was general throughout the loyal states that many had acquiesced in the insurrection under duress, and that they would renounce their connection with the Confederacy and might be unreservedly trusted with the full exercise of political rights. The disillusionment had not yet come. This class proved to be less numerous than had been thought, and further disappointment came from the inability to distinguish them from those whose professions of allegiance were made chiefly for the purpose of protecting their property from the ravages of the army.

Thus the policy of admitting representatives from the doubtful and insurrectionary states is explainable on strong grounds of right and reason, interest and sympathy. There were theories in plenty touching the legal status of the states, and plans of reconstruction logically deduced therefrom. But this is not the place to enumerate and discuss them. The action of Congress was eminently concrete; and these few paragraphs simply embody an attempt, which it is hoped will not be altogether useless, to reason backward from the concrete to the abstract and to present a theory consistent with the facts.

The House committee was very free in going behind the returns and examining into the character of the election. It sought for conformity to law at the polling places. In every case favorably reported, there were found to be at least a few votes cast, counted and returned by the local officers in substantial conformity to the law. In many cases reported with recommendation to reject, the committee were unable to satisfy themselves that any votes at all had been legally cast and counted. However, this was never the sole ground for rejection; the committee went further and found other grounds. But whenever the casting and counting of votes had been safeguarded in substantial conformity to law, the questions of governor's proclamation or governor's certificate and like formalities were readily waived. That is, a district might be represented regardless of the situation in the state at large. If on the customary day or after due notice a district had been free to act and had so far succeeded as to have some votes cast upon which no taint of suspicion could be thrown; if the conditions were such that those who did not vote or whose votes were not counted by the committee could be fairly taken to have acquiesced in the result, the claimant was recommended for admission.

It was a time of rapid change and varying conditions. Later cases involved new considerations which are worthy of presentation here. In the spring of 1862 the Union troops took possession of New Orleans and a few outlying parishes, comprising nearly the whole of two congressional districts, and held such undisputed sway there that President Lincoln was able to put his own plan of reconstruction into operation. A military governor was appointed, a quasi-civil officer, who saw to it that executive and judicial officers were appointed and local and general affairs administered in as full conformity to local law as possible. Under the direction of the military governor elections for two members of Congress were held in 1862, and, somewhat later, in the spring of 1864, a full list of state officers was chosen by popular election, to whom presently the military governor and his appointees gave way.

The first congressional election was held under the auspices of the military governor December 3, 1862. In one district Mr. Flanders received 2,370 votes and all others 273. In the other Mr. Hahn received 2,799 and four others 3,318; about half the usual vote was polled. Two country parishes failed entirely to participate, being outside the Union lines. The registration law of the Confederate legislature, requiring an oath of allegiance to the Confederacy, was set aside and a registration ordered under the law of 1856. The sheriffs issued writs of election and the necessary officers were appointed and fulfilled their functions. But those who ought to have registered and could not do so, or had not, were allowed to vote upon satisfying the commissioners at the polls of their fitness.

So far as recent precedents applied to the cases, it was clear that the claimants were worthy of admission. The new points discussed in the report of the committee and on the floor of the House were: first, the intervention of authorities from outside the state, without warrant of the state constitution or any law of Congress; secondly, the intervention of the federal executive and the army of which he was commander-in-chief. It is significant of the changing conditions and growing sensitiveness of public opinion that these questions now came up for discussion. However, the change of opinion was outside the committee rather than within, as is evident from the recorded votes of its members and from the words of Mr. Dawes, who would have given the act of Military Governor Shepley the same force as if his appointment had been made "by a mass-meeting of all the electors;" and as the sequel will show the change did not yet extend to a majority of the House.

Though "the exact powers of a military governor cannot be easily defined," the committee found that both the Supreme Court[1]

[1] Cross vs. Harrison, 16 Howard, 164.

and Congress, in the case of the senators and representatives from California, had recognized the performance of civil as well as military functions by this officer, and they held that his powers originated in and were limited by necessity. Then, quoting the constitutional obligation upon the United States to guarantee to every state in the Union a republican form of government, the committee argued that representation in the national Congress was one of the essentials of republican government in a state of the Union. Therefore, to hold the election for the choice of congressmen was a function imposed by necessity "in the interim between the absolute reign of rebellion and the complete restoration of law," and so was an act of unimpeachable legality.

Or, again, an argument by confession and avoidance, General Shepley was *de facto* governor of Louisiana. He was performing all the acts of governor; no one opposed; everywhere there was acquiescence. "This House has no jurisdiction to determine who is rightfully in the office of governor of Louisiana." But the power of a governor *de facto* to hold an election was well recognized.

The report was vigorously opposed on the floor of the House. "If I had not thought this was a part and parcel of a grand gigantic system of executive domination, I would not have raised my voice to-day," said Mr. Voorhees, who may be accepted as a type of the ultra-Democrats. He reiterated the complaint that President Lincoln had usurped judicial power by suspending the writ of *habeas corpus*, and charged that he had usurped legislative powers by calling this election. The authority for holding it did not emanate from the governor of the state or from Congress, but from the President, a federal office-holder. Mr. Voorhees further objected that the proclamation of September 22, 1862, and the citation of it in the call for this election constituted a menace to the voters.[1]

It was argued by Mr. Porter, an Indiana Republican, that the federal guarantee related to the states in connection with their state functions merely. It was the duty of the United States to "remove

[1] On January 1, 1863, "all persons held as slaves within any state or designated part of a state, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free. . . . The Executive will on the first day of January aforesaid, by proclamation, designate the states and parts of states, if any, in which the people thereof respectively, shall then be in rebellion against the United states; and the fact that any state or the people thereof shall on that day be in good faith represented in the Congress of the United States by members chosen thereto at elections wherein a majority of the qualified voters of such state shall have participated, shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such state, and the people thereof, are not in rebellion against the United States." Proclamation of President Lincoln, September 22, 1862. In some of the calls in which this proclamation was cited, military officers went so far as to make participation in the election a test of personal loyalty. Cf. proclamation of General Viele in the second district of Virginia. Case of McLeod and Wing, *House Reports*, 37 Cong., 3 sess., p. 23. No important decision hangs on this proclamation.

all impediments" which would prevent the loyal people from "enjoying the benefits of their state constitution." "Possibly to facilitate this it might exert a limited power to set the machinery of state government in motion. . . . But it would be monstrous to maintain that the federal government could appoint all the officers of the state," as in this case. Mr. Bingham, of Ohio, likewise argued that the right of representation could not be exercised "except by sending representatives here through the instrumentality of a state law appointing such election and in full force at the time, or in pursuance of a special law" of Congress. There was no law of Congress applicable to the case. The secessionist state legislature had repealed the old law for the election of federal congressmen. No loyal legislature had re-enacted it, nor were there state officers legally chosen to have enforced it. Mr. Yeamans (Ky., Dem.) moved a substitute resolution that Military Governor Shepley had no authority to call the election, but that inasmuch as the people had acted and expressed an unequivocal choice their chosen representatives should be admitted. This was voted down, eleven yeas to one hundred and fifteen nays, and the original motion passed, ninety-two to forty-four.[1]

The last case decided by this Congress, three days before its dissolution, has an interesting element of romance, and nearly every important ruling of the committee was involved in it and confirmed by the disposition of it. The ninth district of Tennessee was comparatively free from Confederates at the close of 1862 and a spontaneous movement of the loyal citizens resulted in appointing an election on December 13th. Mr. Hawkins was nominated and the machinery of the canvass set in motion. Meanwhile Military Governor Johnson, wishing to aid and ignorant that a date had been set, issued a proclamation appointing the election for December 29th. But his action was not generally known in the district on December 13th, and on that day "many thousand votes" were cast for Hawkins in parts of eight counties out of nine in the district. Perhaps he might have been admitted on the basis of such an election. But he made no effort. Everything was deferred to the presumably more legal election called by the military governor. Before the appointed day came, however, the Confederate General Forrest, learning of the intention to hold an election, made a raid into the district and got control of a considerable part of it. General Hurlbut also approached, with the Union forces, and issued a proclamation further postponing the election until January 5, 1863. But in some places where neither General Forrest's troops nor General Hurlbut's order had

[1] Seventy-four Republicans and eighteen Democrats to twenty Republicans and twenty-four Democrats, six of the Committee of Elections voting yea and two voting nay.

penetrated in time to prevent, an election was held under the governor's proclamation. An unofficial person certified to the returns from one county and a federal general to those from another. Probably some nineteen hundred votes had been cast, nearly all for Mr. Hawkins. Under this election he claimed a seat.

Under the precedents the case was clear against him; there was no legal certification that the election had been conducted at the polls according to law or even that the vote was as claimed; there had been no "legal election." "While, as matter of fact, the House may not doubt that these transactions have taken place," said the committee in their report, "yet it would be most dangerous to take, as legal proof of an election, the papers here presented." So, "in spite of the fact" that no new election could be held and the district must go unrepresented, the committee recommended that the claimant be not admitted; and the House agreed without debate or division. The treatment accorded by the House to Mr. Bridges, of Tennessee, just three days before, and the remarks made on the floor, preclude the inference that the House was indifferent in view of its approaching dissolution.

Thus ten representatives (not including Mr. Upton who was unseated) from nine districts, in three states belonging to the Confederacy, sat in the lower house of the Thirty-seventh Congress, and three senators (one holding over) from two states, sat in the upper house. The House of Representatives recognized the action of the Unionists, district by district. The Senate (and indeed the House, the President and the judiciary) recognized the *de facto* government of Virginia located at Wheeling and loyal to the national government.

FREDERICK W. MOORE.

NOTE.

Applications for Admission to the National Senate and House of Representatives from the seceding states, during the Thirty-seventh Congress, 1861–1863.

The border states—Delaware, Maryland, Kentucky and Missouri—are omitted from the list and are not considered in the main article, since the contests from them involved, in the main, a very different set of considerations.

Senate, Thirty-seventh Congress, First Session, July 4, 1861.

Andrew Johnson, of Tennessee, held over and resigned to become military governor of Tennessee, a position to which he was appointed March 3, 1861, *Cong. Globe*, 37 Cong., 1 sess., p. 1.

J. S. Carlile and Waitman T. Willey, of Virginia, were chosen by

the Wheeling legislature, July 9, 1861, to succeed Senators Hunter and Mason, expelled; and they were sworn in July 13th. *Cong. Globe*, 37 Cong., 1 sess., pp. 103, 109.

House of Representatives, Thirty-seventh Congress, First Session, July 4, 1861.

Messrs. Chas. H. Upton, W. G. Brown, John S. Carlile and K. V. Whaley, from the 7th, 10th, 11th and 12th districts of Virginia, were sworn in July 4, 1861. A Mr. E. H. Pendleton, from another district of the same state, was mentioned in a motion to refer (which was lost); but it does not appear that he ever appeared in person. Charles H. Upton's case was referred to the Committee of Elections, July 8, 1861. *Cong. Globe*, 37 Cong., 1 sess., pp. 3–24, passim.

Second Session, Dec. 2, 1861.

J. B. Blair took the seat made vacant by the resignation of J. S. Carlile, Dec. 3, 1861. *Cong. Globe*, 37 Cong., 2 sess., p. 3.

Horace Maynard, from the second district of Tennessee, was admitted without reference and sworn in Dec. 2, 1861. *Cong. Globe*, 37 Cong., 2 sess., p. 2.

A. J. Clements, from the fourth district of Tennessee, was admitted Jan. 13, 1862. *Cong. Globe*, 37 Cong., 2 sess., pp. 6, 7, 297; *Cont. Elec.* (i. e., *Cases of Contested Elections to Congress from 1834 to 1865 inclusive*, 38 Cong., 2 sess., House Misc., No. 12), p. 366; House Reports, 37 Cong., 2 sess., No. 9.

Joseph Segar, from the first district of Virginia, was refused a seat, Feb. 11, 1862. *Cong. Globe*, 37 Cong., 2 sess., pp. 398, 727ff., 759; *Cont. Elec.*, pp. 426ff.; *House Reports*, 37 Cong., 2 sess., No. 12.

Charles H. Upton, from the seventh district of Virginia, was refused a seat, Feb. 27, 1862. *Cong. Globe*, 37 Cong., 2 sess., pp. 975–1010, passim; *Cont. Elec.*, pp. 368ff.; *House Reports*, 37 Cong., 2 sess., No. 17.

S. F. Beach, from the seventh district of Virginia, was refused a seat, March 31, 1862. *Cong. Globe*, 37 Cong., 2 sess., pp. 32, 435, 1040, 1452; *Cont. Elec.*, pp. 415ff.; *House Reports*, 37 Cong., 2 sess., No. 42.

Joseph Segar, from the first district of Virginia, was seated May 6, 1862. *Cong. Globe*, 37 Cong., 2 sess., pp. 1339, 1856, 1971; *Cont. Elec.*, pp. 415ff.; *House Reports*, 37 Cong., 2 sess., No. 70.

Charles H. Foster, from the first and second districts of North Carolina. On July 13, 1861, Mr. Foster presented his claims to represent the first district of North Carolina and the case was referred to the committee. On December 2d, following, he presented his claims to represent the second district of the same state and likewise referred to the committee. On December 18th, the committee reported that Mr. Foster was not entitled to a seat, "either from the first or from the second district of North Carolina." In presenting the report, Mr. Dawes stated that the committee had "pursued the investigation of this claim so far as

to be entirely satisfied that it is founded in imposition." Again on March 6, 1862, Mr. Foster filed anew his claims to represent the second district, basing them on an alleged new election. The committee reported adversely and their report was adopted June 23d. The report of the committee contains this statement: "This is the fourth time Mr. Foster has claimed to have been elected a representative to the Thirty-seventh Congress, from the State of North Carolina—twice from the first and twice from the second district." But I cannot find that his credentials were presented formally to the House except on the three occasions cited. Mr. Foster was not a citizen of North Carolina, but a Washington office-holder who went south with the army in a quasi-civil capacity. *Cong. Globe*, 37 Cong., 1 sess., p. 115; 37 Cong., 2 sess., pp. 3, 4, 35, 132, 1103, 2737, 2879; *Cont. Elec.*, p. 424; *House Reports*, 37 Cong., 2 sess., No. 118.

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B. F. Flanders and Michael Hahn, from the first and second districts of Louisiana respectively, were admitted Feb. 17, 1863. *Cong. Globe*, 37 Cong., 3 sess., pp. 144, 164, 695, 831ff., 855ff., 888, 1010ff., 1030ff., 1035, 1036; *Cont. Elec.*, pp. 430ff.; *House Reports*, 37 Cong., 3 sess., No. 22.

McLeod and Wing, from the second district of Virginia. W. W. Wing contested the right of John B. McLeod to represent this district. Both were refused seats, February 14, 1863. *Cong. Globe*, 37 Cong., 3 sess., pp. 716, 962; *Cont. Elec.*, p. 465; *House Reports*, 37 Cong., 3 sess., No 23. (McLeod or McLoud or Cloud.)

John B. Rodgers, from Tennessee. The secession government of Tennessee redistricted the state and called an election for the choice of Confederate congressmen. At this election the Union men of one district, comprising in part the counties represented by Mr. Clements, voted for Mr. Rodgers. He was refused a seat, February 14, 1863. *Cong. Globe*, 37 Cong., 3 sess., p. 963; *Cont. Elec.*, p. 462; *House Reports*, 37 Cong., 3 sess., No. 32.

Lewis McKenzie, from the seventh district of Virginia, was refused a seat, February 17, 1863. *Cong. Globe*, 37 Cong., 3 sess., p. 1036; *Cont. Elec.*, p. 460; *House Reports*, 37 Cong., 3 sess., No. 33.

Jennings Pigott, from the second district of North Carolina, was refused a seat, February 23, 1863. *Cong. Globe*, 37 Cong., 3 sess., p. 1208ff.; *Cont. Elec.*, p. 463; *House Reports*, 37 Cong., 3 sess., No. 41.

George W. Bridges, from the third district of Tennessee, was admitted and sworn in, February 25, 1863. *Cong. Globe*, 37 Cong., 3 sess., pp. 1295, 1296.

Christopher L. Grafflin, from the eighth district of Virginia, was refused a seat, March 3, 1863. *Cong. Globe*, 37 Cong., 3 sess., pp. 1540, 1547; *Cont. Elec.*, p. 464; *House Reports*, 37 Cong., 2 sess., No. 43.

Alvin Hawkins, from the ninth district of Tennessee, was refused a seat, March 3, 1863. *Cong. Globe*, 37 Cong., 3 sess., pp. 887, 1540, 1547; *Cont. Elec.*, p. 466; *House Reports*, 37 Cong., 3 sess., No. 33.